

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

FILED
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CLERK OF DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY _____

BOARD OF REGENTS OF THE
UNIVERSITY OF TEXAS SYSTEM,

PLAINTIFF,

-AGAINST-

ALCATEL, ALCATEL USA, INC.,
AMOI ELECTRONICS, INC.,
ANEXTEK GLOBAL INC.,
ARIMA COMMUNICATION CORP.,
AUDIOVOX COMMUNICATIONS
CORP.,
CHI MEI COMMUNICATION SYSTEMS,
INC.,
COMPAL COMMUNICATIONS, INC.,
CURITEL COMMUNICATIONS, INC.,
GIZMONDO EUROPE, LTD.,
HALER GROUP CO.,
HAIER AMERICA IMPORT L.L.C.,
HAIER AMERICA TRADING L.L.C.,
HON HAI PRECISION INDUSTRY CA,
LTD., RESEARCH IN MOTION
LIMITED,
RESEARCH IN MOTION CORP.,
SHARP CORPORATION, a.k.a. SHARP
KABUSHIKI KAISHA,
SYNNEX CORP., TCL
COMMUNICATION TECHNOLOGY
HOLDINGS LIMITED,
TCL & ALCATEL MOBILE PHONES
LIMITED, TIGER TELEMATICS, INC.,
TOSHIBA AMERICA, INC., TOSHIBA
AMERICA ELECTRONIC
COMPONENTS, INC.,
VK. CORPORATION, VK MOBILE USA,
INC., AND UTSTARCOM, INC.

DEFENDANTS.

Case No.: A-05-CA-198 SS

JURY DEMANDED

**DEFENDANT TCL & ALCATEL MOBILE PHONES' ANSWER AND AFFIRMATIVE
DEFENSES TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant TCL & Alcatel Mobile Phones Limited ("T&A")¹, by and through its undersigned attorneys, answer the Second Amended Complaint (the "Complaint") of the Plaintiff, the Board of Regents of the University of Texas System ("The University of Texas"), for itself as follows:

I. THE PARTIES

1. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 1 of the Complaint, and therefore denies those allegations.

2. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 2 of the Complaint, and therefore denies those allegations.

3. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 3 of the Complaint, and therefore denies those allegations.

4. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 4 of the Complaint, and therefore denies those allegations.

5. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 5 of the Complaint, and therefore denies those allegations.

6. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 6 of the Complaint, and therefore denies those allegations.

¹ As of August 26, 2005, TCL & Alcatel Mobile Phones Limited changed its name to T&A Mobile Phones.

7. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 7 of the Complaint, and therefore denies those allegations.

8. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 8 of the Complaint, and therefore denies those allegations.

9. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 9 of the Complaint, and therefore denies those allegations.

10. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 10 of the Complaint, and therefore denies those allegations.

11. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 11 of the Complaint, and therefore denies those allegations.

12. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 12 of the Complaint, and therefore denies those allegations.

13. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 13 of the Complaint, and therefore denies those allegations.

14. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 14 of the Complaint, and therefore denies those allegations.

15. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 15 of the Complaint, and therefore denies those allegations.

16. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 16 of the Complaint, and therefore denies those allegations.

17. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 17 of the Complaint, and therefore denies those allegations.

18. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 18 of the Complaint, and therefore denies those allegations.

19. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 19 of the Complaint, and therefore denies those allegations.

20. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 20 of the Complaint, and therefore denies those allegations.

21. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 21 of the Complaint, and therefore denies those allegations.

22. Admitted that T&A was a joint venture between TCL Holdings and Alcatel incorporated in Hong Kong, that T&A is a non-resident of Texas who does not maintain a regular place of business in Texas or a designated agent for service of process in Texas. It is also admitted that T&A has its principal place of business at Room 1502, Tower 6, China Hong Kong City, 33 Canton Road, Tsim sha tsui, Kowloon, Hong Kong. The remaining allegations set forth in paragraph 22 of the Complaint are denied.

23. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 23 of the Complaint, and therefore denies those allegations.

24. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 24 of the Complaint, and therefore denies those allegations.

25. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 25 of the Complaint, and therefore denies those allegations.

26. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 26 of the Complaint, and therefore denies those allegations.

27. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 27 of the Complaint, and therefore denies those allegations.

28. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 28 of the Complaint, and therefore denies those allegations.

II. JURISDICTION AND VENUE

29. T&A admits that The University of Texas purports to bring this action under the patent laws of the United States, Title 35 of the United States Code, and that this Court has jurisdiction over this action under the above statutes, including 35 U.S.C. § 271 *et seq.* and 28 U.S.C. §§ 1331 and 1338(a).

30. As to the other named defendants in this action, T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations set forth in paragraph 30 of the Complaint, and on that basis denies those allegations. T&A does not contest personal jurisdiction solely for the purpose of this action, but otherwise denies the allegations in paragraph 30.

31. T&A does not contest venue solely for the purpose of this action, but otherwise denies the allegations in paragraph 31.

III. ALLEGED PATENT INFRINGEMENT

32. T&A repeats and realleges the allegations in paragraph 1 through 31 as though fully set forth herein.

33. T&A admits that United States Patent No. 4,674,112 (the “112 patent”) issued on June 16, 1987. T&A denies any remaining allegations set forth in paragraph 33 of the Complaint.

34. Admitted.

35. Denied.

36. Denied.

37. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 37 of the Complaint, and therefore denies those allegations.

38. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 38 of the Complaint, and therefore denies those allegations.

39. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 39 of the Complaint, and therefore denies those allegations.

40. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 40 of the Complaint, and therefore denies those allegations.

41. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 41 of the Complaint, and therefore denies those allegations.

42. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 42 of the Complaint, and therefore denies those allegations.

43. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 43 of the Complaint, and therefore denies those allegations.

44. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 44 of the Complaint, and therefore denies those allegations.

45. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 45 of the Complaint, and therefore denies those allegations.

46. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 46 of the Complaint, and therefore denies those allegations.

47. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 47 of the Complaint, and therefore denies those allegations.

48. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 47 of the Complaint, and therefore denies those allegations.

49. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 49 of the Complaint, and therefore denies those allegations.

50. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 50 of the Complaint, and therefore denies those allegations.

51. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 51 of the Complaint, and therefore denies those allegations.

52. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 52 of the Complaint, and therefore denies those allegations.

53. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 53 of the Complaint, and therefore denies those allegations.

54. T&A is without knowledge or information sufficient to form a belief regarding the truth of the allegations contained in paragraph 54 of the Complaint, and therefore denies those allegations.

55. Denied.

56. Denied.

57. Denied.

IV. PRAYER FOR RELIEF

T&A denies that The University of Texas is entitled to any of the relief sought in paragraphs A through G following the unnumbered "Prayer for Relief" paragraph, or any other relief whatsoever sought in the Complaint.

V. JURY DEMAND

T&A respectfully requests that the Court enter judgment against The University of Texas and grant it no relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint and each and every allegation considered separately fail to state a cause of action against T&A upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

T&A has not directly or indirectly infringed, contributed to the infringement of, infringed through the doctrine of equivalents, or otherwise, nor induced others to infringe any valid claim of the '112 patent.

THIRD AFFIRMATIVE DEFENSE

The '112 patent is invalid for failure to meet one or more of the requirements set forth in 35 U.S.C. §§101 and/or 102.

FOURTH AFFIRMATIVE DEFENSE

The '112 patent is invalid because it fails to meet the requirements for patentability set forth in 35 U.S.C. § 103.

FIFTH AFFIRMATIVE DEFENSE

The '112 patent is invalid because it fails to meet the requirements for patentability set forth in 35 U.S.C. § 112.

SIXTH AFFIRMATIVE DEFENSE

The '112 patent is unenforceable against T&A, in whole or in part, under the doctrine of estoppel.

SEVENTH AFFIRMATIVE DEFENSE

The '112 patent is unenforceable against T&A, in whole or in part, under the doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

The University of Texas has waived any rights it may have had for relief from the Court.

NINTH AFFIRMATIVE DEFENSE

By reason of the proceedings in the United States Patent and Trademark Office during prosecution of the application for the '112 patent, specifically the admissions, representations, and amendments made on behalf of applicant(s) for such patent, Plaintiff is estopped from asserting any construction and/or scope of the claims of the '112 patent that would cover any products or methods of T&A.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims for relief and prayer for damages are limited by its failure to comply with the requirements of 35 U.S.C. §287.

REQUEST FOR RELIEF

T&A respectfully request that this Court:

- A. Dismiss the Complaint of the University of Texas;
- B. Declare the '112 patent not infringed by T&A;
- C. Declare the '112 patent invalid;
- D. Declare the '112 patent unenforceable;
- E. Declare that this is an exceptional case under 35 U.S.C. § 285;
- F. Award T&A its costs, reasonable attorneys' fees, and disbursements (including expert fees) incurred in this action; and

G. Enter such other and further relief as the Court deems just and proper.

September 28, 2005

Respectfully Submitted,

By: _____



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document has been served upon all counsel of record set forth below and the original upon the Clerk of Court on this the 28th day of September, 2005.

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